

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6056 of 1987

with

SPECIAL CIVIL APPLICATION No 9960 of 1999

with

SPECIAL CIVIL APPLICATIONS NOS. 9961 TO 9966 OF 1999

WITH

SPECIAL CIVIL APPLICATIONS NOS. 6098 OF 1987

WITH

SPECIAL CIVIL APPLICATIONS NOS. 9924 TO 9959 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BACHUJI M THAKORE

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 6056 of 1987
AND 9960 TO 9966 OF 1999 and 6098 of 1987
and 9924 to 9941 of 1999
MR AN PATEL for Petitioners
Siddhi Talati,AGP for Respondent No. 1

2. Special Civil Application No 9942 to 9959 of 1999

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 30/03/2000

ORAL JUDGEMENT

These petitions are filed by the petitioners for a declaration that the petitioners are lawful occupants of the premises and for permanent injunction restraining the respondent authorities from demolishing their structures and/or evicting them from the premises they are occupying and for setting aside all actions taken against them by the authorities. Interim injunction was also sought against forcible eviction and removal from the premises.

The case of the petitioners was that they belong to backward class. They were in occupation of land on which they were having dwelling houses. They were paying taxes to the Panchayat regularly. They were also paying land revenue and other taxes. Thus, according to the petitioners, they were legal occupants of the premisses and they could not be evicted nor action could be taken against them without due process of law and without observing principles of natural justice.

It was stated by the petitioners that they were losers of land which was acquired by the State for development of new capital Gandhinagar at a meagre rate which had caused great hardship to them and their profession of agriculture was totally destroyed and they became landless and were exploited on account of unemployment and financial difficulties.

Relying on certain certificates and receipts said to have been issued by local authorities, it was contended by the petitioners that they were on the land in question since many years and their occupation was lawful. Without giving any notice, calling for explanation and affording opportunity of hearing, they were sought to be removed by the authorities by demolishing the construction made by them and by evicting them. The said action was arbitrary, unreasonable and violative of fundamental rights guaranteed under Articles 14 and 19 of the Constitution. No such action could have been taken in the light of Constitutional provisions in Part III and Part IV of the Constitution. As, according to the

petitioners, no alternative and efficacious remedy was available to them against high handed action of the State authorities, they were constrained to approach this Court by filing a petition.

Initially, only one petition was filed on which notice was issued on November 19, 1987 and status quo was ordered. After hearing parties, rule was issued and ad-interim relief against eviction was continued. That was done on 11th January, 1989.

Recently, when the matters was placed for final hearing, my learned brother P.B.Majmudar, J. passed an order that separate petitions were required to be filed by all the petitioners. It was observed that one page petition would suffice and separate sets of Annexures, affidavits etc. would not be necessary. Accordingly, separate petitions are filed.

I have heard Mr. A.N.Patel for the petitioners and Ms Siddhi Talati and M.A.Bukhari for the respondents. Mr. Patel contended that the petitioners are in legal and lawful occupation of the premises and they could not be evicted without due process of law. He also submitted that there was sufficient material on record to satisfy the conscience of court that occupation of the petitioners was lawful. According to the counsel, if the petitioners were to be evicted, it was obligatory on the part of the authorities to issue notice, call for explanation and observe principles of natural justice. Since nothing was done, action can be said to be illegal, improper, unfair and in violation of principles of natural justice which deserves to be quashed and set aside. He submitted that even if this Court is of the view that question of lawful occupation cannot be gone into in exercise of powers under Article 226 of the Constitution, appropriate direction may be given to the authorities to consider and decide representation of the petitioners so that alternative accommodation may be provided to them.

Ms Talati and Mr. Bukhari, on the other hand, supported the action taken by the authorities. They drew my attention to the affidavit in reply filed by the Collector, Gandhinagar, Notified Area. They stated that affidavit was tendered in court earlier, but it is not available. They, therefore, furnished a copy which has been taken on record. In the affidavit, it was stated by the deponent that the land has been included in township of Gandhinagar and it belongs to the State Government absolutely. None of the petitioners has any

right , title or interest in the said land and the petitioners have made unauthorised encroachment over it. It was further stated that as soon as the authorities came to know about unauthorised encroachments, they were removed but in some cases, again unauthorised encroachment was made. Since the petitioners had no right, title or interest in the land in question, they had no right to approach this Court by filing petitions which deserve to be dismissed. It was further stated that if the prayer of the petitioners is granted, development of township of Gandhinagar would be frustrated. The Government cannot allow to frustrate the project by remaining a silent spectator against unauthorised encroachment over Government land. It was also stated that land on which the petitioners claim ownership belongs to their real owners and Government acquired the said land under the Land Acquisition Act for development of Gandhinagar township by paying compensation and the amount was fully paid. It was also stated that even if it was assumed for the sake of argument that any of the petitioners asserted that he was the owner of a particular land and he was not paid compensation, it would be open to him to approach the competent authority by producing reliable evidence on the basis of which, the authority will decide such case, but no petition would be maintainable against the authorities. Regarding evidence, the deponent has stated that by producing unreliable evidence of so called ownership, the petitioners wanted to mislead the Court but they had no right in the property. As the property belonged to Government, the Collector of Gandhinagar township was given power to remove unauthorised encroachment on the land and in discharge of his duty , in larger public interest, he had removed the petitioners. Such action cannot be said to be high handed and there was no violation of fundamental rights of any person. It was also the case of the respondents that in respect of the land which had been acquired, compensation in accordance with provisions of Land Acquisition Act has been paid. Similarly, persons who had lost their land due to acquisition were also given pro rata land for residence and Government job or some other benefit. It was thereafter not open to make any grievance against such acquisition. As there was no violation of any right, statutory or fundamental, the petitions deserve to be dismissed.

Having heard learned advocates for the parties and appreciating the contentions raised by them, in my opinion, all petitions deserve to be dismissed. It was the case of the petitioners that they were all lawful

occupants of the land in question , but no reliable evidence has been produced in support of such claim. Apart from the fact that the respondents have stated that evidence was not reliable and that Panchayat had no authority to collect tax, ordinarily in exercise of the extraordinary powers under Article 226 of the Constitution, this Court does not undertake the task of deciding title to property and ownership of persons. The case of the respondent authorities was that in Gandhinagar township, land was acquired by invoking provisions of the Land Acquisition Act , 1894 and after making payment of compensation to the rightful claimants, possession was taken. If any person was deprived of his land without due process of law, obviously, it would be open to such person to approach the competent authority as observed in the affidavit in reply. But a petition restraining the authorities from acting in accordance with law would not lie. It was also the case of the authorities that after payment was made to rightful claimants and possession was taken over by the Government, the petitioners had made unauthorised encroachment. Obviously, the petitioners cannot be permitted to make unauthorised encroachment. They also cannot contend that they must be afforded alternate land. The petitioners have stated that they belong to backward class and that their cases can be considered sympathetically. So far as writ jurisdiction is concerned, no such direction can be issued. In the facts and circumstances, it can be observed that it is open to the petitioners to make applications/ representations to the Government and if the Government is satisfied that there is substance in what the petitioners state, such applications/ representations will be decided by the authorities in accordance with law.

For the foregoing reasons, I do not see any ground to interfere with the action taken by the authorities. All the petitions deserve to be dismissed and are accordingly dismissed. Rule discharged. Interim relief vacated. No order as to costs.

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